

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCO GODINEZ,

Defendants.

Case No. 2:06-cr-00200-RLH-PAL

REPORT OF
FINDINGS AND RECOMMENDATION

(M/Suppress - #22)

This matter is before the Court on Defendant Marco Godinez' Motion to Suppress Evidence (#22) which was referred to the undersigned for Findings and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(B), and LR IB 1-3 and IB 1-4. The Court has considered the motion and the Government's Response (#23).

BACKGROUND

The defendant, Marco Godinez ("Godinez") is charged in a criminal indictment (#1) returned June 7, 2006, with two counts of distribution of a controlled substance in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and (b)(1)(B)(viii) and one count of possession of a controlled substance with intent to distribute in violation of §§ 841(a)(1), (b)(1)(B)(ii). The indictment also contains forfeiture allegations. The indictment arises out of two "controlled buys" by an undercover agent of the United States Drug Enforcement Administration's ("DEA's") Accelerated Domestic Market Disruption ("ADMD") Task Force in which Godinez allegedly sold the undercover agent cocaine and methamphetamine. The ADMD Task Force originally identified Godinez from information supplied by a paid confidential informant ("C.I."). During the course of the controlled buys, Godinez allegedly informed the undercover agent that he had access to much larger quantities of cocaine and methamphetamine.

1 After the second controlled buy, DEA Special Agent Christopher Cadogan (“Cadogan”) applied
2 for a search warrant for Godinez’ residence at 9155 Mango Stone Lane in Las Vegas, Nevada. Cadogan
3 and other members of the ADMD Task Force believed Godinez resided there based upon their
4 investigation and surveillance of the property. Cadogan averred, based on his training and experience,
5 that documents and proceeds from narcotics trafficking would be found in the residence. The search
6 warrant application was reviewed by U.S. Magistrate Judge Lawrence Leavitt who issued a search
7 warrant on June 2, 2006. The search warrant was executed the same day. Cocaine, two rifles, two
8 handguns, and miscellaneous paperwork were recovered.

9 In the instant motion, Godinez requests an evidentiary hearing, and seeks to suppress all of the
10 items seized from his residence. He asserts Cadogan’s affidavit contained false information because he
11 vouched for the reliability of the confidential informant. He argues that because information relayed by
12 the confidential informant was not corroborated, Cadogan’s reliance on the warrant was unreasonable
13 and the particularity of the warrant is “in doubt” because Cadogan’s affidavit relies on information
14 which was not reliable. He also asserts the warrant was so lacking in indicia of probable cause as to
15 render official belief in its existence entirely unreasonable because the ADMD Task Force did not
16 conduct an independent investigation of the C.I.’s information to determine whether he was reliable or
17 trustworthy. Finally, Godinez argues the affidavit did not provide the issuing judge any information
18 concerning the C.I.’s criminal history “which greatly impacts the informant’s veracity.” Although
19 Godinez is not aware of any critical [adverse] information concerning the C.I., he argues that if the
20 ADMD Task Force had informed Judge Leavitt of the true nature and extent of the C.I.’s history and
21 involvement, a warrant would not have been issued.

22 The government responds that Godinez’s argument concerning the failure to corroborate the
23 C.I.’s information “does not make any sense whatsoever,” and that there was overwhelming probable
24 cause for the search warrant. In the unlikely event the court finds the search warrant lacking in
25 probable cause, the government relies on the good faith exception to the exclusionary rule articulated in
26 United States v. Leon, 468 U.S. 897 (1984).

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DISCUSSION

The Fourth Amendment secures "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourth Amendment protects reasonable and legitimate expectations of privacy. Katz v. U.S., 389 U.S. 347 (1967). The Fourth Amendment protects "people not places." *Id.* Evidence obtained in violation of the Fourth Amendment, and evidence derived from it may be suppressed as the "fruit of the poisonous tree." Wong Sun v. U.S., 371 U.S. 471 (1963).

I. Evidentiary Hearing

The United States Court of Appeals for the Ninth Circuit has held that an evidentiary hearing on a motion to suppress need only be held if the moving papers allege facts with sufficient definiteness, clarity, and specificity to enable the court to conclude that contested issues of material fact exist. United States v. Howell, 231 F.3d 615, 620 (9th Cir. 2000), *citing*, United States v. Walczak, 783 F.2d 852, 857 (9th Cir. 1986); United States v. Harris, 914 F.2d 927, 933 (7th Cir. 1990); United States v. Irwin, 613 F.2d 1182, 1187 (9th Cir. 1980); United States v. Carrion, 463 F.2d 704, 706 (9th Cir. 1972) ("Evidentiary hearings need be held only when the moving papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that relief must be granted if the facts alleged are proved."). "A hearing will not be held on a defendant's pre-trial motion to suppress merely because a defendant wants one. Rather, the defendant must demonstrate that a 'significant disputed factual issue' exists such that a hearing is required." Howell, 231 F.3d at 621, *citing*, Harris, 914 F.2d at 933. The determination of whether an evidentiary hearing is appropriate rests in the reasoned discretion of the district court. United States v. Santora, 600 F.2d 1317, 1320 (9th Cir.), *amended by* 609 F.2d 433 (1979). Although the caption of the motion to suppress requested an evidentiary hearing, the motion itself does not articulate any contested issue of fact which requires an evidentiary hearing. The request for an evidentiary hearing is, therefore, denied.

II. Probable Cause

In Illinois v. Gates, 462 U.S. 213 (1982), the United States Supreme Court held that a determination of probable cause is made by examining the "totality of the circumstances." The

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1 Supreme Court has repeatedly emphasized that the probable cause standard is a “practical,
2 non-technical conception.” Brinegar v. U.S., 338 U.S. 160, 176 (1949).

3 A probable cause determination is two-fold. First, judges must determine the “historical facts,”
4 that is, the events that occurred leading up to the stop or the search. Ornelas v. U.S., 517 U.S. 690
5 (1996). Second, judges are to decide “whether those historical facts, viewed from the standpoint of a
6 reasonable police officer,” amount to probable cause. Id. at 696-97. A judge’s decision regarding
7 probable cause should be given great deference. The duty of a reviewing court is to insure that the
8 magistrate had a substantial basis for concluding that probable cause existed. A reviewing court is
9 required to examine all the circumstances set forth in the affidavit, and in doubtful cases, to give
10 preference to the validity of the warrant. U.S. v. Peacock, 761 F.2d 1313, 1315 (9th Cir.), cert. denied,
11 474 U.S. 847 (1985).

12 A “magistrate may rely on the conclusion of experienced law enforcement officers regarding
13 where evidence of a crime is likely to be found.” U.S. v. Fannin, 817 F.2d 1379, 1381 (9th Cir. 1987).
14 An officer need not include *all* of the information in his possession to obtain a search warrant. An
15 affidavit need only show facts adequate to support the finding of probable cause. U.S. v. Johns, 948
16 F.2d 599, 605 (9th Cir. 1991). “Trustworthy information” must be used to support a probable cause
17 determination and can include a tip from an informant, so long as the tip is reliable. See Gates, 462
18 U.S. at 283. Reliability may be shown by the informant’s past record of reliability, through independent
19 confirmation, or personal observation by the police, or by other methods. See Alabama v. White,
20 496 U.S. 325 (1990).

21 Godinez contends the affidavit supporting this warrant contains false information, specifically,
22 because the affiant vouched for the reliability of a C.I. without conducting an independent investigation
23 or corroborating the information supplied. He asserts that the affidavit supporting this search warrant
24 was so lacking in probable cause to make official reliance on it unreasonable. The court’s review of the
25 affidavit supporting the search warrant suggests otherwise. The affidavit related that the investigation
26 of Godinez was initiated as a result of information received from a reliable LVMPD confidential source
27 who had, in the past, provided law enforcement information which was subsequently corroborated by
28 independent investigation. (Government’s Opposition (#23), Exhibit “1,” Cadogan Affidavit, ¶ 5.)

1 As a result of the information received from the C.I., an undercover officer arranged and made two
2 hand-to-hand purchases from Godinez on April 6 and April 13, 2006. (Id., ¶¶ 6, 7, and 9.) During the
3 first controlled buy, Godinez told the undercover officer that he had distributed high volumes of
4 cocaine, was well connected to drug traffickers in Mexico, and could provide the undercover officer
5 with any amount of cocaine he wanted. (Id., ¶ 7.) Thus, contrary to the Godinez' arguments, the search
6 warrant was not based on the uncorroborated statements of the C.I. that Godinez was involved in drugs,
7 but on two hand-to-hand sales, and Godinez' statements to the purchasing undercover officer.

8 Finally, although Godinez does not cite Franks v. Delaware, he seems to suggest there was a
9 Franks violation which warrants suppression based on the issuing judge's reliance on a deliberately or
10 recklessly false information in the affidavit. In Franks, the Supreme Court held that a defendant could
11 challenge a facially valid affidavit by making a substantial preliminary showing that (1) the affidavit
12 contains intentionally or recklessly false statements, and (2) that without the false statements, the
13 affidavit would be insufficient to support a finding of probable cause. 438 U.S. 154 (1978). Here,
14 Godinez has not asserted that the C.I. provided false or misleading information, only that Cadogan
15 improperly vouched for his or her reliability without conducting an independent investigation. He also
16 suggests that because the affidavit itself did not provide any information regarding the confidential
17 informant's criminal history, his or her reliability could not be adequately assessed by the issuing judge.
18 Here, the affidavit indicated the C.I. had provided reliable information to law enforcement in the past
19 which had been investigated and corroborated. Godinez does not know of any negative information
20 regarding the informant which, if provided to the issuing judge, may have influenced his decision to
21 issue the warrant. Moreover, contrary to the defendant's arguments, the information provided by the
22 C.I. that Godinez was involved in drug trafficking was corroborated by the undercover officer's two
23 hand-to-hand drug purchases from Godinez and Godinez' statements to the undercover officer that he
24 distributed high volumes of cocaine, was well connected to drug traffickers in Mexico, and could
25 provide any amount of cocaine needed. Ample probable cause supported this search warrant without
26 any reference to the manner in which the investigation of Godinez was initiated.

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CONCLUSION

The affidavit supporting the search warrant established ample probable cause under the totality of the circumstances test, and Godinez has not established that the affidavit contained any intentionally or recklessly false statements or misleading omissions that affected the issuing judge's determination of probable cause.

For all of the foregoing reasons,

IT IS THE RECOMMENDATION of the undersigned United States Magistrate Judge that Defendant Marco Godinez' Motion to Suppress Evidence (#22) be DENIED.

Dated this 6th day of November, 2006.


PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE